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Country Report

SINGAPORE

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A INTRODUCTION

1 An *in personam* judgment lays down the rights and obligations between the parties to the action and binds only those parties. An *in rem* judgment pronounces upon the status of a particular subject matter and purports to bind the whole world. This report focuses on foreign *in personam* and *in rem* judgments in civil and commercial matters.

2 A foreign judgment *in personam* or *in rem* in a civil and commercial matter could be recognised and enforced under Singapore law by the operation of the common law rules or one of three statutory schemes. The statutory schemes are the Reciprocal Enforcement of Commonwealth Judgments Act¹ (“RECJA”), the Reciprocal Enforcement of Foreign Judgments Act² (“REFJA”) and Part 3 of the Choice of Court Agreements Act 2016³ (“CCAA”).

3 The influence of English law on Singapore private international law must be acknowledged. The Singapore common law rules on the recognition and enforcement of foreign judgments are largely derived from the English common law rules.⁴ The RECJA and the REFJA are also modelled on UK statutes.⁵ That said, while the English position can be considered as highly persuasive, the Singapore courts refer to decisions

1 Cap 264, 1985 Rev Ed.

2 Cap 265, 2001 Rev Ed.

3 Act 14 of 2016.

4 See also s 3 of the Application of English Law Act (Cap 7A, 1994 Rev Ed).

5 Respectively, the UK Administration of Justice Act 1920 (c 81) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (c 13).

and developments in a variety of jurisdictions and have departed from English law on occasion.⁶

4 This report will first consider the rules under which foreign judgments *in personam* are recognised and enforced at common law, and under the RECJA and the REFJA. As the rules under these three regimes are largely similar to each other,⁷ they will be considered together. Secondly, the rules which apply to foreign judgments *in rem* will be examined. Lastly, the rules underlying the CCAA will be examined.

B COMMON LAW RULES, THE RECIPROCAL ENFORCEMENT OF COMMONWEALTH JUDGMENTS ACT AND THE RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ACT

i In personam judgments

5 The RECJA applies to judgments obtained from the superior courts in the UK and superior courts of other Commonwealth countries that may be gazetted from time to time. To date, this list includes, but is not limited to, the courts of Malaysia, Brunei Darussalam, India (except the State of Jammu and Kashmir), the Commonwealth of Australia, and the states of New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia, the Australian Capital Territory, Norfolk Island and the Northern Territory.

6 The REFJA applies to foreign judgments from superior courts of such countries that may be gazetted from time to time. To date, only the Hong Kong Special Administrative Region of the People's Republic of China has been gazetted. Under both statutes, whether the courts of a

6 *Eg*, in relation to the scope of the defence of fraud: see para 19 below.

7 The provisions in the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) were intended (largely) to reflect the common law rules: Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.151.

country are gazetted depends upon the reciprocity of treatment being given to Singapore judgments.⁸

7 A judgment from a gazetted country which is registered under either the RECJA or the REFJA, as the case may be, would be enforceable in Singapore as if it had been an original Singapore judgment. A foreign judgment to which the RECJA applies can still be enforced at common law, but the judgment creditor will generally be unable to recover for costs.⁹ A foreign judgment to which the REFJA applies can only be enforced through its regime.¹⁰

8 In contrast with the statutory schemes, the doctrinal basis underlying the enforcement of a foreign judgment at common law is that the foreign judgment, if it satisfies certain conditions, gives rise to a simple debt which the judgment debtor is obliged to obey under Singapore law.¹¹ The judgment creditor must sue on a fresh cause of action for a debt. The obligation to pay the debt in Singapore is separate from the original cause of action in the foreign court of origin.¹² There is no requirement at common law that the judgment must emanate from a superior court of the foreign country.

9 At common law, the action on the implied debt has to be commenced within six years of the foreign judgment being handed down.¹³ The same six-year period applies for judgments registered under the REFJA.¹⁴ The RECJA stipulates that an application to register a

8 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 5; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 3.

9 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(5).

10 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 7(1).

11 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 at [42]; *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Ltd* [2014] 2 SLR 545 at [17]; *Alberto Justo Rodriguez Licea v Curacao Drydock Co, Inc* [2015] 4 SLR 172 at [21].

12 *Ralli v Angullia* (1917) 15 SSLR 33.

13 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 at [49] and [54].

14 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 4(1)(a).

foreign judgment must be commenced within 12 months after the date of the judgment “or such longer period as may be allowed by the Court”.¹⁵

10 In general terms, a foreign judgment will be enforced if: (a) it is on the merits of the case; (b) it is for a fixed or ascertainable sum of money that is not a tax, fine or other penalty; (c) it is final and conclusive; (d) the foreign court had international jurisdiction to hear the case according to Singapore private international law rules; and (e) no defences can be raised against enforcement.

11 A party may wish to request that a foreign judgment be recognised, as opposed to enforced, in order to raise a cause of action or issue estoppel.¹⁶ If the Singapore court is asked to recognise the foreign judgment, the same criteria apply, except for the criterion that the foreign judgment is for a fixed or ascertainable sum of money.¹⁷ The recognition of foreign judgments is primarily subject to the common law rules.¹⁸

12 A foreign judgment which orders the payment of a sum of money is clearly enforceable. However, the foreign judgment must be a fresh monetary judgment; a judgment which holds that the judgment debtor remains liable for outstanding sums due on a prior judgment is not one where the judgment debtor is being ordered to pay a definite sum of money to the judgment creditor as no fresh obligation is created.¹⁹ The issue of whether the foreign judgment is a fresh monetary judgment is to

15 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(1). See *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166.

16 *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* [2016] 5 SLR 1322; *Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161.

17 *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* [2016] 5 SLR 1322 at [67].

18 The Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) does not deal with recognition, while the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (“REFJA”) contains one provision which expressly deals with recognition: REFJA, s 11.

19 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129.

be tested by the law of the court of origin.²⁰ In addition, the monetary award must not amount to the direct or indirect enforcement of a foreign penal, revenue or other public law.²¹ Interest on the judgment sum is enforceable.²²

13 Outside of the CCAA, there is no authority in Singapore law for the enforcement of a foreign judgment ordering non-monetary relief, such as an injunction or specific performance.²³ The foreign judgment which orders non-monetary relief may however be entitled to recognition as being *res judicata* in respect of specific issues or causes of action which it decided. In principle, interim relief such as asset freezing orders would not be enforceable in Singapore. Even if one sets aside the requirement that the foreign judgment be for a fixed or ascertainable sum of money, orders for interim relief are usually granted on an *ex parte* basis, and are not final and conclusive judgments on the merits of the case.

14 A foreign judgment is final and conclusive²⁴ as long as it is *res judicata* between the parties under the law of that jurisdiction and the judgment cannot be varied, reopened or set aside by the court which

20 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 at [19].

21 *The Republic of the Philippines v Maler Foundation* [2014] 1 SLR 1389 at [68]; *Alberto Justo Rodriguez Licea v Curacao Drydock Co, Inc* [2015] 4 SLR 172; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 3(2)(b).

22 *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Ltd* [2014] 2 SLR 545 at [80]; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 4(8).

23 The Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ("REFJA") also confine the recognition and enforcement of *in personam* foreign judgments to monetary judgments: s 2(1) of the RECJA and s 3(2)(b) of the REFJA. *Cf Pro Swing Inc v Elta Golf* [2006] 2 SCR 612 (Canada) and *The Brunei Investment Agency v Fidelis Nominees Ltd* [2008] JLR 337 (Jersey).

24 This requirement also applies under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") (*Ho Hong Bank Ltd v Ho Kai Neo* [1932] MLJ 76, a case on the Judgments (Reciprocity) Enactment (No 10 of 1922) of Johore, which is *in pari materia* with the RECJA on this issue) and under s 3(2)(a) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed).

rendered the judgment.²⁵ In determining the issue of finality, the Singapore court will consider not only Singapore law but also “what the foreign law itself says about the nature of the judgment”.²⁶ The judgment is still final and conclusive even if there is the possibility of appealing the judgment to a superior court.²⁷ A default judgment which is final unless subsequently altered will also qualify.²⁸ An interlocutory judgment, which determines finally the rights of the parties in respect of a specific issue, is also capable of being final and conclusive.²⁹

15 Whether the foreign court had international jurisdiction to hear the case is tested by Singapore private international law rules.³⁰ It is irrelevant that the foreign court had jurisdiction to hear the case under its own laws. In general terms, the Singapore court will consider the foreign court to have international jurisdiction to hear the case if the party against whom the judgment was given was either present or resident in the jurisdiction at the time of commencement of proceedings, or, had submitted to the jurisdiction of the foreign court.

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- 25 *Murakami Takako v Wiryadi Louise Maria* [2007] 1 SLR(R) 1119 (HC) at [36], *Murakami Takako v Wiryadi Louise Maria* [2007] 4 SLR(R) 565 (CA) at [51]; *The Bunga Melati 5* [2012] 4 SLR 546 at [81]; *Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161 at [140]–[142].
 - 26 *The Bunga Melati 5* [2012] 4 SLR 546 at [86], citing *The Irina A (No 2)* [1999] 1 Lloyd’s Rep 189 at 193.
 - 27 *Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161 at [140]. *Cf* s 3(2)(e) of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) and s 6(1) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed).
 - 28 *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* [2016] 5 SLR 1322 at [77]; *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechnologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 at [91]–[95].
 - 29 *Equatorial Marine Fuel Management Services Pte Ltd v The Bunga Melati 5* [2010] SGHC 193 (High Court Registry) at [112]–[113], overruled on other grounds *The Bunga Melati 5* [2012] 4 SLR 546 (CA).
 - 30 *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Ltd* [2014] 2 SLR 545 at [25].

16 The common law authorities suggest that mere presence, even if temporary, suffices in relation to a defendant who is a natural person.³¹ However, residence is required under the RECJA and the REFJA.³² Where the judgment debtor is a corporation, the test is whether the corporation is carrying on business from a fixed place of business for more than a minimal period of time by an agent or by a representative who is carrying on the corporation's business in the foreign jurisdiction.³³ The REFJA specifically provides that corporate presence is satisfied if the corporation had its principal place of business in the foreign country³⁴ or had an office or place of business in the foreign country and the proceedings there were in respect of a transaction effected through or at that office or place.³⁵

17 Submission may be by conduct or by an agreement to submit. Submission by conduct occurs when the judgment debtor takes a step in the foreign proceedings which necessarily involved waiving its objection to the jurisdiction of the court.³⁶ Submission by conduct could be

31 *United Malayan Banking Corp Bhd v Khoo Boo Hor* [1995] 3 SLR(R) 839 at [9], citing *Adams v Cape Industries plc* [1990] Ch 433. Cf *RMS Veerappa Chitty v MPL Mootappa Chitty* (1894) 2 SSLR 12.

32 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(2)(b) ("ordinary" residence); Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(2)(a)(iv).

33 *William Jacks & Co (Singapore) Pte Ltd v Nelson Honey & Marketing (NZ) Ltd* [2015] SGHCR 21 at [30], citing *Adams v Cape Industries plc* [1990] Ch 433 at 530. This test is also presumed to apply to interpret the concept of "ordinary" residence of a corporation under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed): Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.173. The Reciprocal Enforcement of Commonwealth Judgments Act also provides for "carrying on business" as another ground of jurisdiction: s 3(2)(b).

34 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(2)(a)(iv).

35 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(2)(a)(v).

36 *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088; *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Ltd* [2014] 2 SLR 545; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) ss 5(2)(a)(i) and 5(2)(a)(ii). *Eg*, a defendant who filed a defence, or who made a counterclaim, cross-action or claim for set-off in the proceedings in the original court would be taken to have necessarily waived his

(continued on the next page)

imputed to the defendant provided there is no unfairness to the defendant in the imputation.³⁷ Submission may also be by an agreement to submit.³⁸ This agreement to submit must be express (usually by means of a choice of court agreement) and cannot be implied.³⁹

18 If the above criteria are fulfilled, the foreign judgment will be entitled to recognition and enforcement in Singapore, subject to no defences being raised against the recognition and enforcement thereof. The defences that may be raised include: (a) the foreign judgment was obtained by fraud; (b) the foreign judgment is against Singapore public policy; (c) the judgment was obtained in breach of natural justice; (d) the foreign judgment conflicts with a Singapore judgment; and (e) the foreign judgment conflicts with an earlier foreign judgment that is entitled to recognition under Singapore law. Each of these defences will now be considered in turn.

19 Both the RECJA⁴⁰ and the REFJA⁴¹ provide for fraud as a defence against registration of a foreign judgment. At common law, a distinction

objection to the jurisdiction of the court: *Malaysia Marine ABD Heavy Engineering Sdn Bhd v VLK Traders Singapore Pte Ltd* [2014] 1 SLR 998 at [23].

37 *Eg*, where the defendant had submitted to prior proceedings in the foreign court which were discontinued, and the subsequent proceedings, to which the defendant did not take part, are essentially a continuation of the first proceedings: *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545.

38 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(2)(c). Under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed), the agreement to submit must be concluded prior to the commencement of proceedings in the foreign court: s 5(2)(a)(iii).

39 *United Overseas Bank Ltd v Tjong Tjui Njuk* [1987] SLR(R) 275; *Sun-Line (Management) Ltd v Canpotex Shipping Services Ltd* [1985–1986] SLR(R) 695. Note that the Privy Council, in *Vizcaya Partners Ltd v Picard* [2016] UKPC 5; [2016] 3 All ER 181, has since held that an implied choice of court agreement could confer international jurisdiction on the foreign court; this decision has yet to be considered by the Singapore courts.

40 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(2)(d).

41 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(1)(a)(iv).

has been made between extrinsic and intrinsic fraud.⁴² If the fraud relates to extrinsic fraud, that is, fraud that is external to the merits of the case,⁴³ the allegation of fraud may be raised at the recognition and enforcement stage, even if no new evidence of fraud is put forward and even if the issue of fraud was considered and dismissed in the foreign court.⁴⁴ It is also irrelevant that the issue of fraud might have been, but had not, been raised before the foreign court.⁴⁵ If the fraud relates to intrinsic fraud, that is, fraud that affects the merits of the case, the allegation of fraud may be raised at the recognition and enforcement stage only if new evidence has been uncovered which reasonable diligence on the part of the defendant would not have uncovered at the time of the original proceedings and the fresh evidence would have been likely to make a difference in the judgment of the foreign court.⁴⁶

20 It is the foreign judgment, and not the underlying cause of action, that has to be against public policy at common law.⁴⁷ The position is the

42 It is unclear if the same distinction applies to the fraud defence under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) as this distinction was not drawn at common law at the time the statutes were enacted.

43 Examples of extrinsic fraud include: the defendant had never been served with process, the suit had been undefended without the defendant's default, the defendant had been fraudulently persuaded by the plaintiff to let judgment go by default, or some fraud to the defendant's prejudice had been committed or allowed in the foreign proceedings: *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 at [21], citing *Woodruff v McLennan* (1887) 14 OAR 242. See also *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechnologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 at [101]–[103].

44 *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515, which confined the rule in *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 to extrinsic fraud. See also *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechnologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 at [99].

45 *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 at [18], citing *Syal v Heyward* [1948] 2 KB 443 in the context of the *Abouloff* rule.

46 *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515; *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechnologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 at [99].

47 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.211.

same under the REFJA.⁴⁸ For example, the enforcement of a foreign judgment that was pursued in breach of an anti-suit injunction granted by the Singapore court would be against Singapore public policy.⁴⁹ It is also likely that a foreign judgment based on a gambling debt would be considered to contravene Singapore public policy.⁵⁰ However, under the RECJA, the focus is on the cause of action; the foreign judgment will be refused registration if the underlying cause of action that was litigated before the foreign court is against public policy.⁵¹

21 According to English common law authorities, breach of natural justice traditionally covers situations such as the defendant had not been given notice of the foreign proceedings or had not been given a sufficient opportunity to present his case.⁵² The defence now extends to any circumstances involving procedural defects which are contrary to the forum's views of "substantial justice".⁵³ This defence has not been examined in detail by the Singapore courts. It is likely that the English common law position will also be followed, not least because it also largely echoes the position under the RECJA and the REFJA. That said, the defence operates more narrowly under the statutory schemes. The RECJA provides that the defence may be invoked if the defendant was not duly served with process and did not appear.⁵⁴ Under the REFJA, the defendant may plead the defence when he did not receive notice in sufficient time to enable him to defend the proceedings and did not appear, although process was duly served on him in accordance with the law of the foreign court.⁵⁵

48 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(1)(a)(v).

49 *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088.

50 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129.

51 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(2)(f).

52 *Jacobson v Frachon* (1928) 138 LT 386.

53 *Adams v Cape Industries plc* [1990] Ch 433 at 564–568.

54 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(2)(c).

55 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(1)(a)(iii).

22 The REFJA, but not the RECJA, contains an estoppel-based defence. At common law, the Singapore courts tend to refer only to fraud, public policy and breach of natural justice as being defences to the recognition and enforcement of foreign judgments. However, there can be no doubt that estoppel-based defences, if it were raised before the court, would be accepted in accordance with orthodox common law principles on *res judicata*.⁵⁶ According to the common law, a foreign judgment which conflicts with a local judgment will not be entitled to recognition. This is clearly the case when the local judgment was handed down prior to the foreign judgment.⁵⁷ In principle, the same ought to apply even if the local judgment was handed down after the foreign judgment.⁵⁸

23 If the Singapore court is faced with two conflicting foreign judgments which are each entitled to recognition in its own right, it is likely that the Singapore courts would give priority to the earlier judgment.⁵⁹ The Singapore courts have a discretion under the REFJA to set aside registration of the later judgment.⁶⁰

24 The RECJA and the REFJA contain additional grounds under which registration may be refused. Under the RECJA, the Singapore court may refuse registration of a foreign judgment, even if it fulfils all the criteria therein, if it would not be “just and convenient” to do so.⁶¹ This provision does not give an untrammelled discretion to the courts; the courts may refuse registration only “where it is practicable and the

56 See further Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at paras 75.218–75.219.

57 *ED & F Man (Sugar) Ltd v Yani Haryanto (No 2)* [1991] 1 Lloyd's Rep 429. See also s 5(1)(b) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed).

58 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.218.

59 *Showlag v Mansour* [1995] 1 AC 431.

60 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(1)(b).

61 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 3(1).

interests of justice require it”.⁶² The REFJA sets out a few additional defences based on trite law.⁶³ The notable additional defence under the REFJA is that the foreign court shall not be deemed to have had jurisdiction if the proceedings in the foreign court had been in breach of an agreement to settle the dispute, unless the defendant had submitted to the jurisdiction of the foreign court.⁶⁴ While the RECJA does not have an express provision dealing with a judgment procured in breach of an agreement to settle the dispute, it may be possible that such a judgment could be refused enforcement on the “just and convenient” ground.⁶⁵ Whether such a defence is available at common law has not been examined by the Singapore courts.⁶⁶

25 The Singapore court will not re-examine the merits of the foreign judgment. That the foreign court made a mistake of law or fact is not a relevant defence.⁶⁷ If part of a foreign judgment is objectionable, while the rest is unobjectionable, the part which is objectionable may be severed and the unobjectionable part enforced, provided the parts can be clearly identified and separated.⁶⁸

62 *Yong Tet Miaw v MBF Finance Bhd* [1992] 2 SLR(R) 549 at [31], adopting *Edwards & Co v Picard* [1909] 2 KB 903 at 907. See also *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166 and *Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] 2 SLR 228.

63 *Eg*, s 4(6) (only the balance payable upon partial satisfaction of judgment debt to be registered); s 5(1)(a)(vi) (judgment rights not vested in person making the application for registration) and s 5(3)(c) (judgment debtor entitled to immunity under the rules of public international law).

64 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(3)(b).

65 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.236.

66 *Cf* s 32 of the UK Civil Jurisdiction and Judgments Act 1982 (c 27) which provides for such a defence.

67 *Ralli v Anguilla* (1917) 15 SSLR 33.

68 *Alberto Justo Rodriguez Licea v Curacao Drydock Inc* [2015] 4 SLR 172 at [28]; *Yong Tet Miaw v MBF Finance Bhd* [1992] 2 SLR(R) 549 at [29]; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 4(7).

ii In rem judgments

26 In the context of a civil and commercial matter, a foreign judgment *in rem* will usually involve a judgment which declares title or possession over a thing, or a judgment which orders the sale of a thing in satisfaction of a claim against the thing itself.⁶⁹ It is the *lex fori* which will characterise the nature of the foreign judgment. In doing so, the Singapore court would consider factors such as the substance of the judgment and its intended effect on the parties;⁷⁰ it is irrelevant whether or not the foreign law recognised the concepts of an *in rem* and *in personam* judgment.⁷¹ It is possible for a foreign judgment to contain both *in rem* and *in personam* aspects.

27 At common law, a foreign judgment *in rem* will be recognised in Singapore if the property which was the subject-matter of the proceedings was at the time of the proceedings in the jurisdiction of the foreign court.⁷² The same rule applies under the REFJA.⁷³ The RECJA does not refer to foreign judgments *in rem*.

28 In general, the same defences apply to both foreign *in personam* and *in rem* judgments.⁷⁴ However, fraud which would otherwise impeach a foreign judgment would not affect a third party who has acquired title to the property in good faith and for value upon reliance of the judgment *in rem*.⁷⁵

69 L Collins *et al*, *Dicey, Morris and Collins on the Conflict of Laws* (Sweet & Maxwell, 15th Ed, 2012) at para 14-109.

70 *Murakami Takako v Wiryadi Louise Maria* [2007] 4 SLR(R) 565 at [30]; *The Republic of Philippines v Maler Foundation* [2014] 1 SLR 1389 at [64].

71 *Murakami Takako v Wiryadi Louise Maria* [2007] 4 SLR(R) 565 at [30].

72 *The Republic of Philippines v Maler Foundation* [2014] 1 SLR 1389 at [66].

73 Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 5(2)(b).

74 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, Reissue, 2013) at para 75.245.

75 *Payna Chettiar v Maimoon bte Ismail* [1997] 1 SLR(R) 738 at [13].

C PART 3 OF THE CHOICE OF COURT AGREEMENTS ACT 2016

29 The CCAA enacts the Hague Convention of 30 June 2005 on Choice of Court Agreements (“HCCCA”) into Singapore law. It came into force on 1 October 2016. To date, the HCCCA has also entered into force in Mexico and the European Union (excluding Denmark). The US and Ukraine, who are signatories, have yet to ratify the HCCCA. China and Montenegro have also recently signed the HCCCA.

30 Subject to certain exclusions,⁷⁶ Part 3 of the CCAA will apply to a foreign judgment emanating from a court of a Contracting State to the HCCCA where the court was the chosen court designated in an exclusive choice of court agreement concluded in a civil or commercial matter, if the choice of court agreement is concluded after the HCCCA enters into force in that Contracting State. It is made clear that the CCAA does not apply to any interim measures of protection.⁷⁷

31 The RECJA and the REFJA do not apply to judgments which may be recognised or enforced under the CCAA.⁷⁸ While it is possible for a judgment creditor to pursue enforcement through the common law rather than the CCAA, the process will be simpler under the latter regime. Once the requirements of the CCAA are satisfied, the foreign judgment will be recognised, or recognised and enforced, in the same manner and to the same extent as a Singapore judgment.⁷⁹ Further, no time limit applies for the registration of a judgment under the CCAA, although, for recognition purposes, the judgment must remain effective in the state of origin, and for enforcement purposes, the judgment must remain enforceable in the state of origin.⁸⁰

32 The general principle underlying Part 3 of the CCAA is, subject to certain defences, a judgment from the chosen court must be recognised

76 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 9.

77 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 10.

78 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 2A; Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) s 2A.

79 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 13(1).

80 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 13(2).

and enforced.⁸¹ This is provided the foreign judgment is also entitled to recognition and enforcement in the state of the chosen court.⁸² The Singapore court is generally barred from reviewing the merits of the foreign judgment and is bound by any findings of fact on which the chosen court assumed jurisdiction, unless the judgment was given by default.⁸³

33 The defences provided under the CCAA are similar to those found at common law. The CCAA provides for three grounds under which a foreign judgment must be refused recognition or enforcement. The first ground is based on there being a breach of natural justice. This is framed in terms of inadequacy of notice of the process to enable the defendant to defend the proceedings, unless the law of the state of origin allows the notification to be challenged and the defendant had entered an appearance and presented his case without challenging that notification.⁸⁴ The second ground is where the foreign judgment was obtained by fraud in connection with a matter of procedure.⁸⁵ The third ground is where the recognition or enforcement of the foreign judgment would be manifestly incompatible with Singapore public policy.⁸⁶ This includes circumstances where the foreign proceedings would be incompatible with fundamental principles of procedural fairness in Singapore.⁸⁷

34 Further, the CCAA sets out instances where the Singapore court has a discretion to refuse recognition or enforcement. The foreign judgment may be refused recognition or enforcement if the exclusive choice of court agreement to which the judgment was obtained is null and void under the law of the state of the chosen court.⁸⁸ The Singapore court is bound by any finding by the chosen court that the agreement is

81 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 13(4).

82 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 13(2).

83 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 13(3).

84 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 14(a).

85 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 14(b).

86 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 14(c).

87 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 14(c).

88 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(a). “Law” here includes the choice of law rules of the state of the chosen court: Trevor Hartley & Masato Dogauchi, *Explanatory Report on the 2005 Hague Choice of Court Agreement Convention* (2013) at p 69, fn 219 <<https://www.hcch.net/en/instruments/conventions/publications1/?dtid=3&cid=98>> (accessed 15 August 2017).

valid.⁸⁹ This is different from the position under the common law rules, the RECJA and the REFJA, where the issue of whether the foreign court had international jurisdiction is determined in accordance with Singapore private international law rules.

35 Refusal may also be based on the fact that a party to the exclusive choice of court agreement lacked the capacity, under the law of Singapore, to enter into the agreement,⁹⁰ or if the defendant was notified of the process in a manner incompatible with the fundamental principles in Singapore concerning the service of documents.⁹¹ Defences based on *res judicata* operate in the same manner as under the common law. If the conflict is with a Singapore judgment, the Singapore judgment may prevail;⁹² if the conflict is between two foreign judgments each of which is entitled to recognition under Singapore law, the earlier judgment may prevail.⁹³

36 The CCAA specifically provides that the Singapore court may refuse enforcement of exemplary or punitive damages.⁹⁴ It also provides that a foreign judgment can be severed and only that part which fulfils the requirements of the CCAA be recognised or enforced.⁹⁵

37 The CCAA allows for the enforcement of non-monetary foreign judgments.⁹⁶ To that end, it is a departure from the other regimes.

89 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(a).

90 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(b). “Law” here includes Singapore’s choice of law rules: Trevor Hartley & Masato Dogauchi, *Explanatory Report on the 2005 Hague Choice of Court Agreement Convention* (2013) at p 69 <<https://www.hcch.net/en/instruments/conventions/publications1/?dtid=3&cid=98>> (accessed 15 August 2017).

91 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(c).

92 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(d).

93 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 15(1)(e).

94 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 16.

95 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 19.

96 Choice of Court Agreements Act 2016 (Act 14 of 2016) s 2(1).